

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1636 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

A'BAD MUNICIPAL CORPORATION

Versus

A'BAD EDUCATION SOCIETY

Appearance:

MR BP TANNA with Mr.Sudhir Mehta for Petitioner
No one is present on behalf of the respondent

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 09/04/99

ORAL JUDGEMENT

1. This Appeal is directed against the order dt.20.11.89 passed by the Small Causes Court No.3 at Ahmedabad in Municipal Valuation Appeal No.2765/86.The respondent - society is running various educational institutions and the premises under dispute is the premises of the School of Architecture situated near Gujarat University bearing Final Plot No.4 in special

property non residential education zone. The Municipal Corporation under B.P.M.C.Act assessed the Gross Rateable Value in respect of the said property at Rs.2,15,124/-for the year 1985-86. The respondent - Society preferred an Appeal under S.406 of the B.P.M.C.Act before the Small Causes Court No.3 at Ahmedabad against the aforesaid G.R.V.assessed by the Municipal Corporation saying that the assessment made by the Municipal Corporation was on higher side as compared to the letting rate of H.L. College of Commerce, A.G.Teachers College of Pharmacy and A.G.High School and M.K.Primary Trading College. The respondent - society contended before the Small Causes Court that letting rate of premises of K.H.Mody Kindergarten was only Rs.2.50 per sq.yd. which is a comparatively new building and situated near the same premises.

2. The learned counsel for the Municipal Corporation who appeared before the Small Causes Court had pointed out that building of the School of Architecture is not situated just near the building of K.H.Mody Kindergarten and the other buildings to which reference was made by the respondent, but he did concede the position that the letting rate, adopted by the Corporation, appeared to be on the higher side.

3. The learned Small Causes Court having noted the aforesaid averments made on behalf of both the sides, has observed that the letting rate prevailing in this locality and also taking into consideration the fact that the premises are being used for educational purposes, the letting rate of the premises in dispute should be considered at Rs.3/- per sq.mt. Having said so, it has been observed that the area of the premises is 2016 sq.mts. and, therefore,the monthly rent was worked out at Rs.6648/- and accordingly the GRV was worked out to be Rs.79776/- instead of Rs.2,15,124/- as assessed by the Municipal Corporation.

4. We have heard learned counsel on behalf of the Municipal Corporation and have gone through the impugned order. We find that the Small Causes Court has not applied the correct principles and the norms on the basis of which the GRV is to be arrived at. In no way, the GRV could be assessed in the manner in which it has been done by the Small Causes Court. It was a case of special property in a non residential educational zone and,therefore, for the purposes of determining the annul letting value the Small Causes Court should have adhered to the clauses 2(1-A) and the proviso (b) and (c) thereunder, which are reproduced as under:-

"(b) in the case of any land of a class not ordinarily let the annual rent of which cannot in the opinion of the Commissioner be easily estimated, the annual rent shall be deemed to be six per cent of the estimated market value of the land at the time of assessment.

(c) in the case of any building of a class not ordinarily let, or in the case of any industrial or other premises of a class not ordinarily let, or in the case of a class of such premises the building or buildings in which are not ordinarily let, if the annual rent thereof cannot in the opinion of the Commissioner be easily estimated, the annual rent shall be deemed to be six per cent of the total of the estimated market value, at the time of the assessment, of the land on which such building or buildings stand or, as the case may be, of the land which is comprised in such premises, and the estimated cost, at the time of the assessment, of erecting the building or, as the case may be, the building or buildings comprised in such premises."

5. Mr.Tanna has submitted that the Municipal Corporation had adhered to the aforesaid provisions while assessing the GRV. However, the Small Causes Court had not taken into consideration the aforesaid relevant factors in the light of the relevant provisions of law and the order shows total lack of application of mind and it has not adhered itself to the real considerations, which were germane for the purpose of assessing the GRV. All that has been done by the Small Causes Court is that after noticing the averments made by both the sides, it has arbitrarily fixed the GRV according to its own opinion, which could never be said to be either an expert opinion or an opinion based on any expert evidence or based on the legal norms in this regard. Merely, because it was pointed out on behalf of the respondent before the Small Causes Court that the letting rate of K.H.Mody Kindergarten was Rs.2.50/- per sq.yd., the Small Causes Court could not come to the conclusion that it should be Rs.3/- per sq.yd. in the present case. The provisions of S.2(1-A) (b) and (c), to which we have made reference herein-before, contemplates the cases with regard to the land and building and, therefore, the GRV has to be assessed in the light of the amended definition of 'annual letting value' as contained in the B.P.M.C.Act,1949. We, therefore, find that in fact there has been no effective and real adjudication as to whether the assessment made by the Municipal Corporation was correct or not and we also do not find that there was any

basis to fix the GRV at Rs.7,97,76/- for the year 1985-86 instead of Rs.2,15,124/-.

6. In the facts and circumstances of this case, the impugned order dt.20.11.89 passed by the Small Causes Court in Municipal Valuation Appeal No.2765/86 is hereby quashed and set aside and the matter is remanded back to the concerned Small Causes Court, which is dealing with such matters now, for hearing and deciding the Municipal Valuation Appeal afresh after hearing the parties in the light of the observations made in this order. Since the Municipal Valuation Appeal is as old as of 1986 and the dispute relates to the year 1985-86, we expect that it should be the endeavour of the Small Causes Court to decide the Appeal as early as possible and preferably within a period of four months from today. This Appeal is allowed in the terms as aforesaid. No order as to costs.

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